

NOT FOR PUBLICATION

OCT 07 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

TIMOTHY GIBLER,

Plaintiff - Appellant,

v.

JO ANNE B. BARNHART, Commissioner of
the Social Security Administration,

Defendant - Appellee.

No. 03-15836

D.C. No. CV-01-00895-MJJ/JL

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted October 5, 2004**
San Francisco, California

Before: CUDAHY, *** GRABER, and FISHER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

*** The Honorable Richard D. Cudahy, Senior Circuit Judge for the United States Court of Appeals for the Seventh Circuit, sitting by designation.

Plaintiff Timothy Gibler appeals from the district court's order denying his motion for relief from judgment under Federal Rule of Civil Procedure 60(b). We review only the grounds raised in the motion and cannot review the merits of the underlying judgment, Cel-A-Pak v. Cal. Agric. Labor Relations Bd., 680 F.2d 664, 668 (9th Cir. 1982) (per curiam), and the standard is abuse of discretion, Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1223 (9th Cir. 2000).

Plaintiff sought relief from the judgment on the basis of two legal arguments. "Legal error does not by itself warrant the application of Rule 60(b)," however. Plotkin v. Pac. Tel. & Tel. Co., 688 F.2d 1291, 1293 (9th Cir. 1982). Even assuming that Plaintiff's legal arguments had merit, the district court did not abuse its discretion in concluding that he had failed to demonstrate to that court "extraordinary circumstances which prevented" him from filing an appeal. Id.

Plaintiff also argues that we should reconsider a prior panel's ruling that he is not entitled to equitable tolling of the period for appeal of the underlying judgment. The period for filing a notice of appeal is subject to tolling only as provided in Federal Rule of Appellate Procedure 4, Torres v. Oakland Scavenger Co., 487 U.S. 312, 315, 317 (1988), the conditions of which Plaintiff did not meet.

AFFIRMED.